

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BLAKE H. CHAPPELL,
Petitioner,
v.
ST. ANDRE,
Respondent.

No. 2:22-cv-01429 KJM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 31, 2022, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 14. After receiving an extension of time, petitioner filed timely objections to the findings and recommendations. ECF No. 18.

In his objections, petitioner reiterates his actual innocence claim and requests an evidentiary hearing. Attached to the objections, he includes a signed letter by Nicholas Vargas, which states petitioner “was [at his property] consistently every day with myself and my family” and “was a worker whom [sic] worked for me ‘day in and day out up until his court date.’” *Id.*

1 at 5. Vargas also notes he sent a letter attesting to petitioner's innocence to the District Attorney
2 and to the Superior Court, and attended court hearings. *Id.*

3 As the magistrate judge's findings and recommendations explain, a showing of actual
4 innocence can equitably toll an otherwise time-barred habeas petition, *Lee v. Lampert*, 653 F.3d
5 929, 937 (9th Cir. 2011) (en banc), but only when "new reliable evidence" is presented "that was
6 not presented at trial," *Schlup v. Delo*, 513 U.S. 298, 324 (1995). The magistrate judge concluded
7 a letter from petitioner's mother, Mrs. Logan, did not qualify as new reliable evidence. *See* ECF
8 No. 14 at 2. Petitioner's additional letter does not satisfy *Schlup*'s standard for the same reasons
9 the statement from Mrs. Logan did not satisfy it. First, the statement is neither a sworn statement
10 nor an unsworn declaration signed under penalty of perjury. *See Schlup*, 513 U.S. at 324
11 (explaining reliable evidence includes "scientific evidence, trustworthy eyewitness accounts, or
12 critical physical evidence"). Second, this evidence is not "new," as petitioner, the District
13 Attorney, and the Superior Court were all purportedly aware of the alibi. Even if Vargas did not
14 successfully contact the District Attorney or the Superior Court, there is no explanation for the
15 thirteen-year delay in presenting this evidence. *See* ECF No. 14 at 2; *McQuiggin v. Perkins*,
16 569 U.S. 383, 399 (2013). In sum, for the same reasons Mrs. Logan's statement did not establish
17 a credible claim of actual innocence, the Vargas letter does not establish a credible claim of actual
18 innocence for purposes of *Schlup*.

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
20 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the
21 findings and recommendations to be supported by the record and by the proper analysis.
22 Moreover, as noted by the magistrate judge, the first amended petition, filed after the findings and
23 recommendations were issued, is substantively identical to the original petition and the
24 October 31, 2022 findings and recommendations therefore apply equally to the amended petition.
25 *See* ECF No. 17 at 2.

26 Accordingly, IT IS HEREBY ORDERED that:

27 1. The findings and recommendations filed October 31, 2022 (ECF No. 14), are adopted
28 in full;

2. Petitioner's application for a writ of habeas corpus is dismissed as untimely;

3. The court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253; and

4. The Clerk of the court is directed to close this case.

DATED: January 24, 2023.


CHIEF UNITED STATES DISTRICT JUDGE